/IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 24.06.2005

CORAM

THE HONOURABLE MR.JUSTICE P.SATHASIVAM
and
THE HONOURABLE MR.JUSTICE AR.RAMALINGAM

W.P.No.18823 of 2001
and
W.P.M.P.No.27677 of 2001

S.Suresh Kumar ..Petitioner

-vs-

1. The Deputy Inspector General,
   Central Industrial Security Force Unit,
   BCCL, Koyla Nagar HQ.,
   Dhanbad.

2. The Commandant,
   Central Industrial Security Service Unit,
   BCCL, Koyla Bhavan,
   Dhanbad, Bihar.

3. The Commandant,
   Central Industrial Security Force,
   Service Unit, Harbour Division,
   Chennai 600 009. .. Respondents

Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorarified Mandamus to call for the records on the file of the 2nd respondent in connection with the order of removal from service in Proc.V-15014/55/Disc/Co(D)/99-652 dated 25.5.99 and order on Appeal passed by the 1st respondent in letter No.V-11014/DISC/AD.III/2001 dated 25.09.2001 and quash the same and direct the respondents to reinstate the petitioner in service with all monetary and service benefits.

For petitioner : Mr.K.Sannjay
For respondents : Mr.R.Santhanam,SCGSC

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O R D E R

(Order of the Court was made by P.SATHASIVAM,J.)

The petitioner/Constable, Central Industrial Security Force Unit, BCCL Area No.VI, Dhanbad, Bihar, challenges his "Removal from Service" as well as dismissal of his appeal petition.

2. The brief facts as stated in the affidavit are reproduced hereunder. According to the petitioner, after his selection as Constable in the year 1992 by direct recruitment, he was posted in the State of Orissa and then he was transferred to Bihar in the year 1998. While he was serving at Bihar, he was granted 15 days Casual Leave with effect from 01.05.1998 to 21.05.1998. After completion of the said leave, he had to report duty on 22.05.1998 to the competent authority. He further states that because of his family circumstances, he could not report duty on the specified date. Hence he was charge sheeted under Rule 34 of CISF Rules, 1969, vide charge memorandum dated 12.12.1998, which was served on 12.01.1999.

3. According to the petitioner, he is the only son and his father suffered two massive heart attacks. Hence, it is his responsibility to take care of his father for treatment. While his father was under treatment, his uncle passed away on 27.11.1998. While so, the charge sheet dated 12.12.1998 was sent to his native place by Registered Post with a direction to submit his written reply within 15 days of the receipt of the same. Since he did not receive the same, the charge memorandum was sent to him through Special Messenger and it was acknowledged by him on 22.01.1999. Thereafter, he submitted his explanation narrating all his family circumstances along with his resignation letter dated 22.01.1999 to the concerned authority. As his explanation was not satisfactory, an Enquiry Officer was appointed to conduct enquiry into the charges levelled against him vide order dated 28.01.1999. The Enquiry Officer conducted ex-parte enquiry and submitted his report as charge held proved. The enquiry report was sent to the petitioner along with a show cause notice dated 07.05.1999 with a direction to submit his written representation if any, within 15 days on receipt of the same. He received the copy of the enquiry report on 20.05.1999 and submitted his explanation to the enquiry officer's report on 25.05.1999. He further states that before considering his explanation, the respondents have passed final order 25.05.1999 removing him from service. He made an appeal to the Deputy Inspector General, Central Industrial Security Force Unit, Dhanbad, through the first respondent on 03.09.2001. The same was rejected by the first respondent vide his letter dated 25.09.2001 on the ground that the appeal was barred by limitation. Questioning the same, the

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petitioner has filed the present writ petition.

4. On behalf of the respondents, Commandant, CISF Unit, BCCL, Dhanbad, second respondent herein, filed a common counter affidavit reiterating their stand. It is stated that though the petitioner had proceeded on 15 days casual leave with effect from 01.05.1998 with eligible permission, he did not report to the Unit on expiry of his leave and continued to overstay beyond his sanctioned leave unauthorisedly, despite repeated call up letters sent to him at his declared home/leave address. In the absence of any reply, a charge memorandum under Rule 34 of CISF Rules, 1969 was issued to him and the same was served through special messenger on 22.01.1999. In reply to the charge memorandum, he tendered his resignation vide his application 22.01.1999 due to his personal problems. The Disciplinary Authority decided to conduct a departmental enquiry into the charge. Hence, an Enquiry Officer was appointed to enquire into the charge. The Enquiry Officer issued several enquiry notices to the petitioner at his permanent home address/leave address, but, the petitioner did not attend the departmental enquiry. As such the enquiry was conducted ex-parte after giving all reasonable opportunity to the petitioner. The enquiry report was also supplied to him at his permanent home/leave address giving him opportunity to submit his representation, if any, against the enquiry report and findings of the Enquiry Officer within 15 days. Since the petitioner did not submit any representation against the enquiry report, the final order was passed by the Disciplinary Authority on 25.05.1999, imposing the penalty of "Removal from Service". The said final order was also sent to his permanent home/leave address under registered post highlighting that if he desires, he can file an appeal within 30 days of the receipt of the said order, but, the petitioner did not prefer any appeal petition within the specific time limit. However, he had submitted an application dated 03.09.2001 to the DIG, CISF Unit, BCCL, Dhanbad, requesting for reinstatement in service, but, the same was not considered by the DIG, at the belated stage. It is also stated that the writ petition was not maintainable in this Court since the entire course of action has arisen at CISF Unit, BCCL, Dhanbad, which comes under the territorial jurisdiction of Jharkhand High Court, Ranchi.

5. In the light of the above pleadings, we have heard the learned counsel for the petitioner as well as the Senior Central Government Standing Counsel for the respondents.

6. In view of the narration of the case of the petitioner and the respondents in the earlier part of our order, it is not necessary for us to refer the same once again. It is clear

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from the information furnished in the counter affidavit that the charge, namely that the petitioner overstayed, was substantiated by the Enquiry Officer. It is not in dispute that he was asked to participate in the enquiry. We are of the view that the notice was sent to his permanent home/leave address as furnished by him. Even the charge memorandum was served only through special messenger, since he did not participate in the enquiry and put forth his difficulties. The Enquiry Officer, after setting him ex-parte, based on the materials, submitted his report holding that the charges are proved. On receipt of the report of the Enquiry Officer, the original authority sent a notice enclosing findings of the Enquiry Officer to the petitioner with a direction to submit his explanation, if any, within 15 days of the receipt of the enquiry report. The particulars furnished show that the petitioner did not submit his representation within the prescribed time and hence the Disciplinary Authority, considering the available materials, by order dated 25.05.1999, imposed the penalty of "Removal from Service".

7. It is also brought to our notice that though the petitioner was informed that if he is aggrieved by the order passed on 25.05.1999, he is free to file an appeal before the appellate authority within the prescribed period as per the Rules, admittedly, he did not prefer any appeal within the said time. However, on 03.09.2001, he had submitted an application to the DIG, CISF Unit, BCCL, Dhanbad, requesting to re-instate him in service, but the same was not considered as it was made at a belated stage.

8. Though the learned counsel appearing for the petitioner highlighted the grievance experienced by the petitioner, namely illness of his father and family circumstances which forced him to overstay beyond the permitted period, the said explanation was not accepted by the authority concerned. Taking note of the fact that the petitioner did not participate in the enquiry and submit his objection within the prescribed time and that he failed to file an appeal within the granted time, inasmuch as the Disciplinary Authority, on consideration of the entire materials and in view of the Rules, passed an appropriate order imposing the penalty of "Removal from service" which was affirmed by the appellate authority, we are of the view that even if we accept that the writ petition before this Court is maintainable, the same is liable to be dismissed for the above said reasons. Further, the punishment imposed by the Disciplinary Authority is in consonance with the Rules and the same cannot said to be either disproportionate or unreasonable. Except for the leniency pleaded by the petitioner before us, no other infirmity was brought to our notice. For

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the reasons stated above and in the light of the considered orders passed by the competent authority, we do not find any valid ground for interference. Accordingly, the petition fails and the same is dismissed. No costs. Consequently connected WPMP No.27677 of 2001 is also dismissed.

Sd/
Asst.Registrar

/true copy/

Sub Asst.Registrar

gms

To

1. The Deputy Inspector General,
   Central Industrial Security Force Unit,
   BCCL, Koyla Nagar HQ.,
   Dhanbad, Bihar State.

2. The Commandant,
   Central Industrial Security Service Unit,
   BCCL, Koyla Bhavan,
   Dhanbad, Bihar.

3. The Commandant,
   Central Industrial Security Force,
   Service Unit, Harbour Division,
   Chennai 600 009.

+1cc to Mr.R.Santanam,Senior central Govt. Standing Council, SR.No.25724

TS(CO)
kaa 29.06.

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